S.B. CIVIL WRIT PETITION NO.4959/2006
Ram Dayal & Ors.
Vs.
ADJ, Chabra District Baran & Ors.

DATE OF ORDER : 24.5.2007

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri J.K. Yadav for the petitioners.

Heard learned counsel for the petitioners.

The petitioner has challenged the order dated 31.8.2005 whereby his application under Order 1 Rule 10 read with Section 151 CPC for impleadment as defendant in the civil suit filed by Roopnarayan was dismissed by the Court of Additional District Judge, Chabra, District Baran.

Learned counsel for the

petitioner has argued that the learned trial court misread and misconstrued the pleadings. While rejecting the aforesaid application, the learned court below erred in observing that the suit was filed by the plaintiff seeking declaration to the effect that he was adopted son of deceased Shyonath. In fact, the suit was filed with the prayer that the sale deed executed by Jyana Bai, widow of Shyonath, in favour of defendant no.1 Dev Kishan be set aside.

Having heard learned counsel for the petitioner and perused the impugned order as also copy of the plaint, I find that the suit in fact was filed by Roopnarayan, nephew of deceased Shyonath, who claims to be his adopted son and in that capacity he claims that the widow of

Shyonath, Jyana Bai, could not have sold the disputed property to defendant no.2, Dev Kishan. Learned counsel for the petitioner, in course of argument, has informed that the adoption deed has already been set aside by the court and separate litigation on that issue is pending before the trial court on remand from this Court. Even if the learned trial court has incorrectly stated about the nature of the relif prayed for, the fact remains that foundation of the prayer in the suit for setting aside the sale deed was the claim of the plaintiff that he was adopted son of deceased Shyonath. The petitioner has not been able to show as to what interest would he have in the matter except that he was adopted by the deceased. When already

widow of the deceased is contesting the matter, his impleadment to that suit was not necessary. The reasons stated in support of the impugned order may not be correct but the order in substance on scrutiny appears to be correct.

I, therefore, do not find any error in the order of the learned court below so as to warrant interference by this Court.

The writ petition is dismissed.

(MOHAMMAD RAFIQ),J.

Skant/-